Reprinted
April 3, 2009

# ENGROSSED
# HOUSE BILL No. 1398

DIGEST OF HB 1398 (Updated April 2, 2009 2:44 pm - DI 92)

**Citations Affected:** IC 5-22; IC 6-2.5; IC 15-11; IC 15-15; IC 21-31; noncode.

**Synopsis:** Ethanol incentives. Requires state educational institutions to purchase mid-level blends of gasoline and ethanol, E85, and blended biodiesel fuel to the extent possible. Provides that the E85 sales tax deduction applies only to reporting periods beginning on January 1 and ending before April 1. Specifies procedures for administering the deduction. Transfers administration of the deduction from the department of revenue to the state budget agency. Provides that the amount of money expended on administering Indiana corn market development statutes in a state fiscal year may not exceed 10% of the total amount of assessments, grants, and gifts received by the corn marketing council in that year. Establishes the retail merchant E85 deduction reimbursement fund. Requires the Indiana corn marketing council's annual transfers to the retail merchant E85 deduction reimbursement fund to be in amounts calculated to restore a balance of $500,000. Adjusts corn checkoff refund and audit requirements. Adds school corporations and state educational institutions to the list of governmental entities that are eligible to apply to the department of agriculture for a grant under the E85 fueling station grant program.

**Effective:** Upon passage; July 1, 2009; August 1, 2009.




## Grubb, Friend, Pearson, Oxley

(SENATE SPONSORS — GARD, STUTZMAN, DEIG)


January 13, 2009, read first time and referred to Committee on Agriculture and Rural Development.
February 17, 2009, amended, reported — Do Pass.
February 23, 2009, read second time, amended, ordered engrossed.
February 24, 2009, engrossed.
February 25, 2009, read third time, passed. Yeas 98, nays 1.

SENATE ACTION

March 5, 2009, read first time and referred to Committee on Energy and Environmental Affairs.
March 17, 2009, amended, reported favorably — Do Pass.
April 2, 2009, read second time, amended, ordered engrossed.

Reprinted
April 3, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.



# ENGROSSED
# HOUSE BILL No. 1398

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 5-22-5-8, AS AMENDED BY P.L.6-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) This section does not apply to a political subdivision, **except a school corporation (as defined in IC 20-18-2-16(a)).**

(b) As used in this section, "blended biodiesel" has the meaning set forth in IC 6-3.1-27-2.

**(c) As used in this section, "diesel fueled vehicle" refers to a vehicle that is capable of using diesel to fuel its primary motor.**

~~(c)~~ **(d)** As used in this section, "ethanol" means agriculturally derived ethyl alcohol.

~~(d) As used in this section, "gasohol" means gasoline that contains:~~

~~(1) at least ten percent (10%) ethanol; or~~

~~(2) ethyl tertiary butyl ether (ETBE) additives derived from ethanol.~~

**(e) As used in this section, "E85" has the meaning set forth in IC 6-6-1.1-103.**

~~(e)~~ **(f)** As used in this section, "gasoline fueled vehicle" refers to a vehicle that is capable of using gasoline to fuel its primary motor.

**(g) As used in this section "mid-level blend fuel" means a fuel blend consisting of:**

**(1) at least twenty percent (20%) but not more than seventy-three percent (73%) ethanol; and**

**(2) gasoline as the balance.**

~~(f)~~ **(h)** As used in this section, "vehicle" includes the following:

(1) An automobile.

(2) A truck.

(3) A tractor.

~~(g)~~ **(i)** Except as provided by ~~subsection (i),~~ **subsections (k) and (l),** a governmental body shall whenever possible purchase ~~gasohol~~ **mid-level blend fuel or E85** to fuel the gasoline fueled vehicles owned or operated by the governmental body.

~~(h)~~ **(j)** Except as provided by ~~subsection (i),~~ **subsections (k) and (l),** a governmental body shall whenever possible purchase blended biodiesel fuel to fuel the diesel fueled vehicles owned or operated by the governmental body.

~~(i)~~ **(k)** The following vehicles are exempt from the requirements of subsections ~~(g)~~ **(i)** and ~~(h).~~ **(j):**

(1) A vehicle that is leased by the governmental body for thirty (30) days or less.

~~(2) A vehicle whose official operating manual, as issued by the manufacturer of the vehicle, contains a statement that the use of gasohol or blended biodiesel fuel will damage the engine of the vehicle.~~

~~(3)~~ **(2)** A vehicle that:

(A) is primarily powered by an electric motor; or

(B) can use only propane, compressed or liquified natural gas, or methanol as its fuel source.

**(l) The following vehicles are exempt from the requirements of subsection (i) or (j), whichever is appropriate:**

**(1) A gasoline fueled vehicle in which the use of mid-level blend fuel or E85 has not been approved by the manufacturer.**

**(2) A diesel fueled vehicle in which the use of blended biodiesel fuel has not been approved by the manufacturer.**

**(3) A gasoline fueled vehicle in which the use of mid-level blend fuel is prohibited by the federal Clean Air Act (42 U.S.C. 7401 et seq.).**

SECTION 2. IC 6-2.5-7-5, AS AMENDED BY P.L.146-2008, SECTION 315, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

(1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.

(2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.

(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

(4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

(5) The total amount of money received from the sale of special fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals six and fifty-four hundredths percent (6.54%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which the merchant has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

(A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

(B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to ~~subsection (d),~~ **subsections (d) and (f),** for **qualified** reporting periods **beginning after June 30, 2009, and** ending before July 1, 2020, determine the product of:

(A) eighteen cents ($0.18); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed ~~one million dollars ($1,000,000)~~ **the amount of money that the budget agency determines is available in the retail merchant E85 deduction reimbursement fund established under IC 15-15-12-30.5 for the deductions** for all retail merchants in ~~all~~ **a particular qualified** reporting ~~periods.~~ **period.** A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. ~~If the department determines that the sum of:~~

~~(1) the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus~~

~~(2) the total amount of deductions granted under subsection (c) STEP TWO in all preceding reporting periods;~~

~~will exceed one million dollars ($1,000,000),~~ **Before August 1 of each year, the budget agency shall estimate whether the amount of deductions from the immediately preceding qualified reporting period that are subject to reimbursement under IC 15-15-12-30.5(f) and the deductions expected to be reported under subsection (c) STEP TWO for the qualified reporting periods beginning after December 31 and ending before April 1 of the following year will exceed the amount of money available in the retail merchant E85 deduction reimbursement fund for the deductions. If the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund is insufficient to cover the amount of the deductions expected to be reported,** the ~~department~~ **budget agency** shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is ~~terminated after the date specified~~ **suspended with respect to the qualified reporting periods occurring in the following calendar year** ~~in the notice~~ and that no ~~additional~~ deductions will be granted for retail transactions occurring ~~after the date specified in the notice.~~ **in the**

**qualified reporting periods occurring in the following calendar year.**

**(e) As used in this section, "qualified reporting period" refers to a reporting period beginning after December 31 and ending before April 1 of each year.**

**(f) The budget agency may suspend the deduction program under subsection (c) STEP TWO for a particular year at any time during a qualified reporting period if the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund and the amount of money that will be transferred to the fund on July 1 will not be sufficient to reimburse the deductions expected to occur before the deduction program for the year ends on March 31. The budget agency shall immediately provide notice to the participating retail merchants of the decision to suspend the deduction program for that year.**

SECTION 3. IC 15-11-11-6.5, AS ADDED BY P.L.91-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. As used in this chapter, "unit" means a city, town, county, ~~or~~ township, **school corporation (as defined in IC 20-18-2-16(a)), or state educational institution (as defined in IC 21-7-13-32).**

SECTION 4. IC 15-15-12-29, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29. (a) The council shall pay all expenses incurred under this chapter with money from the assessments remitted to the council under this chapter.

(b) The council may invest all money the council receives under this chapter, including gifts or grants that are given for the express purpose of implementing this chapter, in the same way allowed by law for public funds.

(c) The council may expend money from assessments and from investment income not needed for expenses for market development, promotion, and research.

(d) The council may not use money received, collected, or accrued under this chapter for any purpose other than the ~~implementation of~~ **purposes authorized by** this chapter. **The amount of money expended on administering this chapter in a state fiscal year may not exceed ten percent (10%) of the total amount of assessments, grants, and gifts received by the council in that state fiscal year.**

SECTION 5. IC 15-15-12-30.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 30.5. (a) The retail merchant E85**

**deduction reimbursement fund is established. The fund consists of:**

**(1) assessments transferred by the council for deposit in the fund under section 32.5 of this chapter;**

**(2) gifts; and**

**(3) grants.**

**(b) Except as provided in subsection (g), money in the fund may only be used for the purposes described in subsection (d).**

**(c) On May 1, the budget agency shall determine the sum of all retail merchant deductions allowed under IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)).**

**(d) The budget agency shall transfer the amount determined under subsection (c) from the fund for deposit. The amount transferred under this subsection shall be deposited in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.**

**(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.**

**(f) If the amount of money in the fund on May 1 is insufficient to reimburse the state for all retail merchant deductions allowed under IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)), the budget agency shall deduct from any amounts transferred for deposit into the fund in the remainder of that calendar year an amount sufficient to cure the insufficiency. The budget agency shall transfer any amounts deducted under this subsection for deposit in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.**

**(g) If the retail merchant E85 deduction program is terminated, any balance in the fund must be transferred to the council.**

SECTION 6. IC 15-15-12-32.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 32.5. (a) On July 1, 2010, the council shall transfer five hundred thousand dollars ($500,000) to the budget agency for deposit in the retail merchant E85 deduction reimbursement fund established by section 30.5 of this chapter.**

**(b) On July 1, 2011, and each year thereafter, the council shall transfer to the budget agency for deposit in the retail merchant E85 deduction reimbursement fund established by section 30.5 of this chapter an amount equal to the difference between:**

**(1) five hundred thousand dollars ($500,000); minus**

**(2) the balance remaining in the fund on June 30.**

**However, the amount transferred under this subsection may not exceed five hundred thousand dollars ($500,000).**

SECTION 7. IC 15-15-12-33, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 33. (a) If a producer has sold corn and the state assessment was deducted from the sale price of the corn, the producer may secure a refund equal to the amount deducted upon filing a written application.

(b) A producer's application for a refund under this section must be made to the council not more than one hundred eighty (180) days after the state assessment is deducted from the sale price of the producer's corn.

(c) The council shall provide application forms to a first purchaser for purposes of this section upon request and make application forms available on the council's Internet web site. Before July 1, 2009, a first purchaser shall provide an application form to each producer along with each settlement form that shows a deduction. After June 30, 2009, a first purchaser shall make application forms available in plain view at the first purchaser's place of business.

(d) Proof that an assessment has been deducted from the sale price of a producer's corn must be attached to each application for a refund submitted under this section by a producer. The proof that an assessment was deducted may be in the form of a duplicate or an original copy of the purchase invoice or settlement sheet from the first purchaser. The ~~claim~~ **refund** form and proof of assessment may be mailed or faxed to the council. The refund form must clearly state how to request a refund, the address where the form may be mailed, and the fax number where the form may be faxed.

(e) If a refund is due under this section, the council shall remit the refund to the producer not later than thirty (30) days after the date the producer's **completed** application and proof of assessment are received.

SECTION 8. IC 15-15-12-34, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 34. The checkoff ~~assessment and remittance record~~ **refund** form must:

~~(1) be in a format that allows a corn producer to submit the same form for an assessment refund;~~

~~(2)~~ **(1)** contain the address and fax number of the location to which the assessment refund form may be sent;

~~(3)~~ **(2)** contain information concerning procedures to claim an

assessment refund; and

~~(4)~~ **(3)** contain any other information determined necessary by the council.

SECTION 9. IC 15-15-12-35, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 35. (a) A first purchaser shall keep detailed records of all assessments collected and remitted under this chapter for at least three (3) years.

(b) Upon request, a first purchaser shall supply the council with any information from records kept under subsection (a).

(c) The council may periodically audit a first purchaser's checkoff assessment and remittance records kept under subsection (a). An audit must be conducted by:

**(1)** a qualified public accountant of the council's choosing; **or**

**(2) an auditor who is familiar with the:**

**(A) storage;**

**(B) conditioning;**

**(C) shipping; and**

**(D) handling;**

**of agricultural commodities.**

~~and~~ The costs of the audit shall be paid by the council.

SECTION 10. IC 21-31-9-3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a) As used in this section, "blended biodiesel" has the meaning set forth in IC 6-3.1-27-2.**

**(b) As used in this section, "diesel fueled vehicle" refers to a vehicle that is capable of using diesel to fuel its primary motor.**

**(c) As used in this section, "ethanol" means agriculturally derived ethyl alcohol.**

**(d) As used in this section, "E85" has the meaning set forth in IC 6-6-1.1-103.**

**(e) As used in this section, "gasoline fueled vehicle" refers to a vehicle that is capable of using gasoline to fuel its primary motor.**

**(f) As used in this section, "mid-level blend fuel" means a fuel blend consisting of:**

**(1) at least twenty percent (20%) but not more than seventy-three percent (73%) ethanol; and**

**(2) gasoline as the balance.**

**(g) As used in this section, "vehicle" includes the following:**

**(1) An automobile.**

**(2) A truck.**

**(3) A tractor.**

**(h) Except as provided by subsections (j) and (k), a state educational institution shall whenever possible purchase mid-level blend fuel or E85 to fuel the gasoline fueled vehicles owned or operated by the state educational institution.**

**(i) Except as provided by subsections (j) and (k), a state educational institution shall whenever possible purchase blended biodiesel fuel to fuel the diesel fueled vehicles owned or operated by the state educational institution.**

**(j) The following vehicles are exempt from the requirements of subsections (h) and (i):**

**(1) A vehicle that is leased by the state educational institution for thirty (30) days or less.**

**(2) A vehicle that:**

**(A) is primarily powered by an electric motor; or**

**(B) can use only propane, compressed or liquified natural gas, or methanol as its fuel source.**

**(k) The following vehicles are exempt from the requirements of subsection (h) or (i), whichever is appropriate:**

**(1) A gasoline fueled vehicle in which the use of mid-level blend fuel or E85 has not been approved by the manufacturer.**

**(2) A diesel fueled vehicle in which the use of blended biodiesel fuel has not been approved by the manufacturer.**

**(3) A gasoline fueled vehicle in which the use of mid-level blend fuel is prohibited by the federal Clean Air Act (42 U.S.C. 7401 et seq.).**

SECTION 11. IC 6-2.5-7-5.5 IS REPEALED [EFFECTIVE JULY 1, 2009].

SECTION 12. IC 15-15-12-30 IS REPEALED [EFFECTIVE AUGUST 1, 2009].

SECTION 13. [EFFECTIVE AUGUST 1, 2009] **(a) On August 1, 2009, the budget agency shall transfer any remaining balance in the Indiana corn market development account established under IC 15-15-12-30 (before its repeal) to the retail merchant E85 deduction reimbursement fund established by IC 15-15-12-30.5, as added by this act.**

**(b) This SECTION expires January 1, 2010.**

SECTION 14. **An emergency is declared for this act.**

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1398, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 24 through 42, begin a new paragraph and insert:

"SECTION 2. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

(d) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(e) "E85" has the meaning set forth in IC 6-6-1.1-103.

(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

(i) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

(j) "Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

(k) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

(l) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

(1) the total price per unit; minus

(2) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

(m) "Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

(n) "Distributor" means a person who is the first purchaser of

gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

(o) "Prepayment rate" means a rate per gallon of gasoline determined by the department under section 14 of this chapter for use in calculating prepayment amounts of gross retail tax under section 9 of this chapter.

(p) "Purchase or shipment" means a sale or delivery of gasoline, but does not include:

(1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or

(2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

(q) "Qualified distributor" means a distributor who:

(1) is a licensed distributor under IC 6-6-1.1; and

(2) holds an unrevoked permit issued under section 7 of this chapter.

(r) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

(s) "Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

**(t) "Ethanol blended fuel" refers to any blend of gasoline and ethanol nominally consisting of more than ten percent (10%) but less than eighty-five percent (85%) ethanol.**".

Delete page 3.

Page 4, delete lines 1 through 7.

Page 4, line 29, reset in roman "total".

Page 4, line 29, delete "sum of the".

Page 4, line 29, delete "E20, E30, and".

Page 5, line 11, after "for" insert "**qualified**".

Page 5, line 13, delete "ten" and insert "**twelve**".

Page 5, line 13, delete "($0.10)" and insert "**($0.12)**".

Page 5, line 14, delete "sum of the".

Page 5, line 14, delete "E20, E30, and".

Page 5, line 22, strike "one million dollars ($1,000,000)" and insert

"**the amount of money that the budget agency determines is available in the retail merchant E85 deduction reimbursement fund established under IC 15-15-12-30.5 for the deductions**".

Page 5, line 23, strike "all" and insert "**a particular qualified**".

Page 5, line 23, strike "periods." and insert "**period.**".

Page 5, line 25, strike "If the department determines that the sum of:".

Page 5, strike lines 26 through 29.

Page 5, line 30, strike "will exceed one million dollars ($1,000,000)," and insert "**Before August 1 of each year, the budget agency shall estimate whether the deductions expected to be reported under subsection (c) STEP TWO for the qualified reporting periods beginning after December 31 and ending before April 1 of the following year would exceed the amount of money available in the retail merchant E85 deduction reimbursement fund for the deductions. If the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund is insufficient to cover the amount of the deductions expected to be reported,**".

Page 5, line 30, strike "department" and insert "**budget agency**".

Page 5, line 32, strike "terminated after the date specified" and insert "**suspended with respect to the qualified reporting periods occurring in the following calendar year**".

Page 5, line 33, strike "in the notice".

Page 5, line 33, strike "additional".

Page 5, line 34, strike "after the date specified in the notice." and insert "**in the qualified reporting periods occurring in the following calendar year.**".

Page 5, delete lines 35 through 42, begin a new paragraph and insert:

"**(e) As used in this section, "qualified reporting period" refers to a reporting period beginning after December 31 and ending before April 1 of each year.**

SECTION 4. IC 6-3.1-27-12, AS AMENDED BY P.L.191-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry over the excess to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A credit may not be carried forward

for more than ~~six (6)~~ **ten (10)** taxable years following the taxable year in which the taxpayer was first entitled to claim the credit.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit. A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.".

Page 6, delete lines 1 through 15.

Page 6, delete lines 22 through 42, begin a new paragraph and insert:

"SECTION 6. IC 15-15-12-30, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 30. (a) The Indiana corn market development account is established within the state general fund for purposes of market development and reimbursing the state for the E85 retail merchant deduction allowed under IC 6-2.5-7-5(d). The account shall be administered by the council. The account consists of:

(1) assessments the council receives under this chapter;

(2) gifts; and

(3) grants.

(b) The expenses of administering this chapter must be paid from money in the account. ~~If the balance of the account is not more than five hundred thousand dollars ($500,000) in a fiscal year, the council may expend not more than twenty-five percent (25%) of the balance for administrative expenses. If the account has a balance of more than five hundred thousand dollars ($500,000) in a fiscal year, the council may spend an additional amount of not more than ten percent (10%) of the balance over five hundred thousand dollars ($500,000) for administrative expenses.~~

(c) On July 1 of each year the budget agency shall transfer from the account an amount equal to ~~the lesser of:~~

~~(1) twenty-five percent (25%) of the balance of the account on the immediately preceding June 30, before the deduction of any expenses under subsection (b). or~~

~~(2) the sum of all retail merchant deductions allowed under IC 6-2.5-7-5(d) and IC 6-2.5-7-5.5, in the immediately preceding state fiscal year. The amount transferred under this subsection (c) shall be deposited in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.~~ **five hundred thousand dollars ($500,000) to the retail merchant E85 deduction reimbursement fund established under section 30.5 of this chapter.**

(d) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same

manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(e) Money in the account at the end of a state fiscal year does not revert to the state general fund.

SECTION 7. IC 15-15-12-30.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 30.5. (a) The retail merchant E85 deduction reimbursement fund is established.**

**(b) The fund consists of money transferred from the Indiana corn market development account under section 30 of this chapter. Except as provided in subsection (g), money in the fund may only be used for the purposes described in subsection (d).**

**(c) Before May 1, the budget agency shall determine the sum of all retail merchant deductions allowed under IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)).**

**(d) The budget agency shall transfer the amount determined under subsection (c) from the fund for deposit. The amount transferred under this subsection shall be deposited in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.**

**(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.**

**(f) If the amount of money in the fund is insufficient to reimburse the state for all retail merchant deductions allowed under IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)), the budget agency shall transfer from the Indiana corn market development account established under section 30 of this chapter an amount sufficient to cure the insufficiency. Money in the state general fund may not be expended for the purposes described in this section.**

**(g) If the retail merchant E85 deduction program is terminated, any balance in the fund must be transferred to the Indiana corn market development account established under section 30 of this chapter.**".

Delete pages 7 through 10.

Page 11, delete lines 1 through 16.

Page 11, delete lines 25 through 29, begin a new paragraph and insert:

"**(d) As used in this section, "ethanol blended fuel" refers to any**

**blend of gasoline and ethanol nominally consisting of more than ten percent (10%) but less than eighty-five percent (85%) ethanol.**".

Page 11, line 37, delete "gasohol" and insert "**ethanol blended fuel**".

Page 12, line 8, delete "gasohol" and insert "**ethanol blended fuel**".

Page 12, delete lines 14 through 30, begin a new paragraph and insert:

"SECTION 9. IC 6-2.5-7-5.5 IS REPEALED [EFFECTIVE JULY 1, 2009].".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1398 as introduced.)

PFLUM, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1398 be amended to read as follows:

Page 4, line 8, delete "[EFFECTIVE UPON PASSAGE]" and insert "[EFFECTIVE JULY 1, 2009]".

Page 5, line 8, strike "subsection (d)," and insert "**subsections (d) and (f),**".

Page 5, line 9, after "periods" insert "**beginning after June 30, 2009, and**".

Page 5, line 10, reset in roman "eighteen".

Page 5, line 10, delete "twelve".

Page 5, line 10, reset in roman "($0.18);".

Page 5, line 10, delete "($0.12);".

Page 5, line 32, after "whether" insert "**the amount of deductions from the immediately preceding qualified reporting period that are subject to reimbursement under IC 15-15-12-30.5(f) and**".

Page 5, line 35, delete "would" and insert "**will**".

Page 6, between lines 8 and 9, begin a new paragraph and insert:

"**(f) The budget agency may suspend the deduction program under subsection (c) STEP TWO for a particular year at any time during a qualified reporting period if the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund and the amount of money that will**

**be transferred to the fund on July 1 will not be sufficient to reimburse the deductions expected to occur before the deduction program for the year ends on March 31. The budget agency shall immediately provide notice to the participating retail merchants of the decision to suspend the deduction program for that year.**".

Page 6, delete lines 29 through 42.

Page 7, delete lines 1 through 24.

Page 7, line 28, after "established." insert "**The fund consists of:**

**(1) assessments transferred by the council for deposit in the fund under section 32.5 of this chapter;**

**(2) gifts; and**

**(3) grants.**".

Page 7, line 29, delete "The fund consists of money transferred from the Indiana"

Page 7, delete line 30.

Page 7, line 33, delete "Before" and insert "**On**".

Page 8, line 4, after "fund" insert "**on May 1**".

Page 8, line 8, delete "transfer from the Indiana corn market development account" and insert "**deduct from any amounts transferred for deposit into the fund in the remainder of that calendar year**".

Page 8, line 9, delete "established under section 30 of this chapter".

Page 8, line 10, delete "Money in the state general fund may not be" and insert "**The budget agency shall transfer any amounts deducted under this subsection for deposit in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.**".

Page 8, delete line 11.

Page 8, line 13, delete "Indiana corn" and insert "**council.**".

Page 8, delete lines 14 through 15, begin a new paragraph and insert:

"SECTION 8. IC 15-15-12-32.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 32.5. On July 1, 2010, and each year thereafter, the council shall transfer five hundred thousand dollars ($500,000) to the budget agency for deposit in the retail merchant E85 deduction reimbursement fund established by section 30.5 of this chapter.**".

Page 9, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 11. IC 15-15-12-30 IS REPEALED [EFFECTIVE AUGUST 1, 2009]

SECTION 12. [EFFECTIVE AUGUST 1, 2009] **(a) On August 1,**

**2009, the budget agency shall transfer any remaining balance in the Indiana corn market development account established under IC 15-15-12-30 (before its repeal) to the retail merchant E85 deduction reimbursement fund established by IC 15-15-12-30.5, as added by this act.**

**(b) This SECTION expires January 1, 2010.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1398 as printed February 18, 2009.)

PEARSON

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred House Bill No. 1398, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 5-22-5-8, AS AMENDED BY P.L.6-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) This section does not apply to a political subdivision, **except a school corporation (as defined in IC 20-18-2-16(a)).**

(b) As used in this section, "blended biodiesel" has the meaning set forth in IC 6-3.1-27-2.

**(c) As used in this section, "diesel fueled vehicle" refers to a vehicle that is capable of using diesel to fuel its primary motor.**

~~(c)~~ **(d)** As used in this section, "ethanol" means agriculturally derived ethyl alcohol.

~~(d) As used in this section, "gasohol" means gasoline that contains:~~

~~(1) at least ten percent (10%) ethanol; or~~

~~(2) ethyl tertiary butyl ether (ETBE) additives derived from ethanol.~~

(e) As used in this section, "gasoline fueled vehicle" refers to a vehicle that is capable of using gasoline to fuel its primary motor.

(f) As used in this section, "vehicle" includes the following:

(1) An automobile.

(2) A truck.

(3) A tractor.

(g) Except as provided by subsection (i), a governmental body shall

whenever possible purchase ~~gasohol~~ **ethanol blended fuel (as defined in IC 6-2.5-7-1(t))** to fuel the gasoline fueled vehicles owned or operated by the governmental body.

(h) Except as provided by subsection (i), a governmental body shall whenever possible purchase blended biodiesel fuel to fuel the diesel fueled vehicles owned or operated by the governmental body.

(i) The following vehicles are exempt from the requirements of subsections (g) and (h):

(1) A vehicle that is leased by the governmental body for thirty (30) days or less.

(2) A vehicle whose official operating manual, as issued by the manufacturer of the vehicle, contains a statement that the use of ~~gasohol~~ **ethanol blended fuel (as defined in IC 6-2.5-7-1(t))** or blended biodiesel fuel will damage the engine of the vehicle.

(3) A vehicle that:

(A) is primarily powered by an electric motor; or

(B) can use only propane, compressed or liquified natural gas, or methanol as its fuel source.".

Page 2, delete lines 1 through 23.

Page 4, delete lines 3 through 5, begin a new paragraph and insert:

"**(t) "Ethanol blended fuel" refers to any blend of gasoline and ethanol nominally consisting of less than eighty-five percent (85%) gasoline and satisfying either of the following:**

**(1) The blend consists of more than ten percent (10%) ethanol.**

**(2) The blend consists of a percentage of ethanol authorized by at least one (1) of the following:**

**(A) The Indiana Code.**

**(B) The United States Code.**

**(C) A waiver granted under Section 211(f) of the federal Clean Air Act Amendments of 1977.**".

Page 6, delete lines 23 through 36, begin a new paragraph and insert:

"SECTION 5. IC 6-6-1.1-1008 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1008. (a) If any of the conditions specified in subsection (b) occur, the administrator may seal a gasoline pump, ~~gasohol~~ **ethanol blended fuel** pump, aviation gasoline pump, or marina gasoline pump; impound any vehicle or tank that does not have a sealable pump; and post a sign that states that no transactions involving gasoline or ~~gasohol,~~ **ethanol blended fuel,** or both, can be made at the person's location.

(b) The administrator may take the actions specified in subsection

(a) if:

(1) a licensed distributor becomes delinquent in the payment of any amount due under this chapter;

(2) there is evidence that the revenue of a licensed distributor is in jeopardy;

(3) a distributor is operating without the license required by this chapter;

(4) a licensed distributor is operating without the bond, letter of credit, or cash deposit required by this chapter; or

(5) a person has received gasoline in this state and the gasoline tax has not been remitted to the state as required by section 504 of this chapter.

(c) The pumps may be sealed and the sign posted until:

(1) all reports are filed and the fees, taxes, fines, and penalties imposed by this chapter are paid;

(2) the interest and penalties imposed by IC 6-8.1-10-1 and IC 6-8.1-10-2.1 are paid in full;

(3) the license required by this chapter is obtained; and

(4) the bond, letter of credit, or cash deposit required by this chapter is provided.

(d) The administrator may require any person operating under this chapter to report meter readings that show the amount of fuel dispensed or used from a metered pump.

(e) The administrator may authorize the state police department to impound any vehicle or tank under subsection (a) on behalf of the department of state revenue.

**(f) As used in this section, "ethanol blended fuel" has the meaning set forth in IC 6-2.5-7-1(t).**

SECTION 6. IC 6-6-1.1-1316 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1316. (a) A person:

(1) who knowingly breaks a seal on a sealed fuel pump without authorization; or

(2) who knowingly fails or refuses to report meter readings under section 1008 or section 1110 of this chapter;

commits a Class D felony.

(b) A person who, without authorization:

(1) removes;

(2) alters;

(3) defaces; or

(4) covers;

a sign posted by the department that states that no transactions involving gasoline, ~~gasohol,~~ **ethanol blended fuel (as defined in**

**IC 6-2.5-7-1(t)),** aviation gasoline, or marina gasoline may be made at a location commits a Class B misdemeanor. However, the offense is a Class D felony if it is committed with the intent to evade the tax imposed by this chapter or to defraud the state.

(c) A dealer or licensed distributor shall notify the department of:

(1) a broken fuel pump seal; or

(2) a removed, altered, defaced, or covered sign that has been posted by the department.

(d) A dealer or licensed distributor that fails to notify the department, as required by subsection (c), within two (2) days after:

(1) a fuel pump seal is broken; or

(2) a sign posted by the department has been removed, altered, defaced, or covered;

commits a Class D felony.

SECTION 7. IC 7.1-1-3-18.5, AS ADDED BY P.L.94-2008, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18.5. (a) "Grocery store" means a store or part of a store that is known generally as:

(1) a supermarket, grocery store, or delicatessen and is primarily engaged in the retail sale of a general food line, which may include:

(A) canned and frozen foods;

(B) fresh fruits and vegetables; and

(C) fresh and prepared meats, fish, and poultry;

(2) subject to subsection (b), a convenience store or food mart and is primarily engaged in:

(A) the retail sale of a line of goods that may include milk, bread, soda, and snacks; or

(B) the retail sale of automotive fuels and the retail sale of a line of goods that may include milk, bread, soda, and snacks;

(3) a warehouse club, superstore, supercenter, or general merchandise store and is primarily engaged in the retail sale of a general line of groceries or gourmet foods in combination with general lines of new merchandise, which may include apparel, furniture, and appliances; or

(4) a specialty or gourmet food store primarily engaged in the retail sale of miscellaneous specialty foods not for immediate consumption and not made on the premises, not including:

(A) meat, fish, and seafood;

(B) fruits and vegetables;

(C) confections, nuts, and popcorn; and

(D) baked goods.

(b) The term includes a convenience store or food mart as described in subsection (a)(2) only if the sale of alcoholic beverages on the premises of the convenient store or food mart represents a percentage of annual gross sales of twenty-five percent (25%) or less of all items sold on the premises, excluding gasoline and automotive oil products.

(c) The term does not include an establishment known generally as a gas station that is primarily engaged in:

(1) the retail sale of automotive fuels, which may include diesel fuel, ~~gasohol,~~ **ethanol blended fuel,** or gasoline; or

(2) the retail sale of automotive fuels, which may include diesel fuel, ~~gasohol,~~ **ethanol blended fuel,** or gasoline and activities that may include providing repair service, selling automotive oils, replacement parts, and accessories, or providing food services.

**(d) As used in this section, "ethanol blended fuel" has the meaning set forth in IC 6-2.5-7-1(t).**

SECTION 8. IC 8-2.1-24-18, AS AMENDED BY P.L.21-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) 49 CFR Parts 40, 375, 380, 382 through 387, 390 through 393, and 395 through 398 are incorporated into Indiana law by reference, and, except as provided in subsections (d), (e), (f), and (g), must be complied with by an interstate and intrastate motor carrier of persons or property throughout Indiana. Intrastate motor carriers subject to compliance reviews under 49 CFR 385 shall be selected according to criteria determined by the superintendent which must include but are not limited to factors such as previous history of violations found in roadside compliance checks and other recorded violations. However, the provisions of 49 CFR 395 that regulate the hours of service of drivers, including requirements for the maintenance of logs, do not apply to a driver of a truck that is registered by the bureau of motor vehicles and used as a farm truck under IC 9-18, or a vehicle operated in intrastate construction or construction related service, or the restoration of public utility services interrupted by an emergency. Except as provided in subsection (i), intrastate motor carriers not operating under authority issued by the United States Department of Transportation shall comply with the requirements of 49 CFR 390.21(b)(3) by registering with the department of state revenue as an intrastate motor carrier and displaying the certification number issued by the department of state revenue preceded by the letters "IN". Except as provided in subsection (i), all other requirements of 49 CFR 390.21 apply equally to interstate and intrastate motor carriers.

(b) 49 CFR 107 subpart (F) and subpart (G), 171 through 173, 177

through 178, and 180, are incorporated into Indiana law by reference, and every:

(1) private carrier;

(2) common carrier;

(3) contract carrier;

(4) motor carrier of property, intrastate;

(5) hazardous material shipper; and

(6) carrier otherwise exempt under section 3 of this chapter;

must comply with the federal regulations incorporated under this subsection, whether engaged in interstate or intrastate commerce.

(c) Notwithstanding subsection (b), nonspecification bulk and nonbulk packaging, including cargo tank motor vehicles, may be used only if all the following conditions exist:

(1) The maximum capacity of the vehicle is less than three thousand five hundred (3,500) gallons.

(2) The shipment of goods is limited to intrastate commerce.

(3) The vehicle is used only for the purpose of transporting fuel oil, kerosene, diesel fuel, gasoline, ~~gasohol,~~ **ethanol blended fuel (as defined in IC 6-2.5-7-1(t)),** or any combination of these substances.

All additional federal standards for the safe transportation of hazardous materials apply until July 1, 2000. After June 30, 2000, the maintenance, inspection, and marking requirements of 49 CFR 173.8 and Part 180 are applicable. In accordance with federal hazardous materials regulations, new or additional nonspecification cargo tank motor vehicles may not be placed in service under this subsection after June 30, 1998.

(d) For the purpose of enforcing this section, only:

(1) a state police officer or state police motor carrier inspector who:

(A) has successfully completed a course of instruction approved by the United States Department of Transportation; and

(B) maintains an acceptable competency level as established by the state police department; or

(2) an employee of a law enforcement agency who:

(A) before January 1, 1991, has successfully completed a course of instruction approved by the United States Department of Transportation; and

(B) maintains an acceptable competency level as established by the state police department;

on the enforcement of 49 CFR, may, upon demand, inspect the

books, accounts, papers, records, memoranda, equipment, and premises of any carrier, including a carrier exempt under section 3 of this chapter.

(e) A person hired before September 1, 1985, who operates a motor vehicle intrastate incidentally to the person's normal employment duties and who is not employed as a chauffeur (as defined in IC 9-13-2-21(a)) is exempt from 49 CFR 391 as incorporated by this section.

(f) Notwithstanding any provision of 49 CFR 391 to the contrary, a person at least eighteen (18) years of age and less than twenty-one (21) years of age may be employed as a driver to operate a commercial motor vehicle intrastate. However, a person employed under this subsection is not exempt from any other provision of 49 CFR 391.

(g) Notwithstanding subsection (a) or (b), the following provisions of 49 CFR do not apply to private carriers of property operated only in intrastate commerce or any carriers of property operated only in intrastate commerce while employed in construction or construction related service:

(1) Subpart 391.41(b)(3) as it applies to physical qualifications of a driver who has been diagnosed as an insulin dependent diabetic, if the driver has applied for and been granted an intrastate medical waiver by the bureau of motor vehicles pursuant to this subsection. The same standards and the following procedures shall apply for this waiver whether or not the driver is required to hold a commercial driver's license. An application for the waiver shall be submitted by the driver and completed and signed by a certified endocrinologist or the driver's treating physician attesting that the driver:

(A) is not otherwise physically disqualified under Subpart 391.41 to operate a motor vehicle, whether or not any additional disqualifying condition results from the diabetic condition, and is not likely to suffer any diminution in driving ability due to the driver's diabetic condition;

(B) is free of severe hypoglycemia or hypoglycemia unawareness and has had less than one (1) documented, symptomatic hypoglycemic reaction per month;

(C) has demonstrated the ability and willingness to properly monitor and manage the driver's diabetic condition;

(D) has agreed to and, to the endocrinologist's or treating physician's knowledge, has carried a source of rapidly absorbable glucose at all times while driving a motor vehicle, has self monitored blood glucose levels one (1) hour before driving and at least once every four (4) hours while driving or

on duty before driving using a portable glucose monitoring device equipped with a computerized memory; and

(E) has submitted the blood glucose logs from the monitoring device to the endocrinologist or treating physician at the time of the annual medical examination.

A copy of the blood glucose logs shall be filed along with the annual statement from the endocrinologist or treating physician with the bureau of motor vehicles for review by the driver licensing medical advisory board established under IC 9-14-4. A copy of the annual statement shall also be provided to the driver's employer for retention in the driver's qualification file, and a copy shall be retained and held by the driver while driving for presentation to an authorized federal, state, or local law enforcement official. Notwithstanding the requirements of this subdivision, the endocrinologist, the treating physician, the advisory board of the bureau of motor vehicles, or the bureau of motor vehicles may, where medical indications warrant, establish a short period for the medical examinations required under this subdivision.

(2) Subpart 396.9 as it applies to inspection of vehicles carrying or loaded with a perishable product. However, this exemption does not prohibit a law enforcement officer from stopping these vehicles for an obvious violation that poses an imminent threat of an accident or incident. The exemption is not intended to include refrigerated vehicles loaded with perishables when the refrigeration unit is working.

(3) Subpart 396.11 as it applies to driver vehicle inspection reports.

(4) Subpart 396.13 as it applies to driver inspection.

(h) For purposes of 49 CFR 395.1(l), "planting and harvesting season" refers to the period between January 1 and December 31 of each year. The intrastate commerce exception set forth in 49 CFR 395.1(l), as it applies to the transportation of agricultural commodities and farm supplies, is restricted to single vehicles and cargo tank motor vehicles with a capacity of not more than five thousand four hundred (5,400) gallons.

(i) The requirements of 49 CFR 390.21 do not apply to an intrastate carrier or a guest operator not engaged in interstate commerce and operating a motor vehicle as a farm vehicle in connection with agricultural pursuits usual and normal to the user's farming operation or for personal purposes unless the vehicle is operated either part time or incidentally in the conduct of a commercial enterprise.

(j) The superintendent of state police may adopt rules under IC 4-22-2 governing the parts and subparts of 49 CFR incorporated by reference under this section.".

Page 6, after line 42, begin a new paragraph and insert:

"SECTION 10. IC 15-15-12-29, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29. (a) The council shall pay all expenses incurred under this chapter with money from the assessments remitted to the council under this chapter.

(b) The council may invest all money the council receives under this chapter, including gifts or grants that are given for the express purpose of implementing this chapter, in the same way allowed by law for public funds.

(c) The council may expend money from assessments and from investment income not needed for expenses for market development, promotion, and research.

(d) The council may not use money received, collected, or accrued under this chapter for any purpose other than the ~~implementation of~~ **purposes authorized by** this chapter. **The amount of money expended on administering this chapter in a state fiscal year may not exceed ten percent (10%) of the total amount of assessments, grants, and gifts received by the council in that state fiscal year.**".

Page 7, line 38, after "32.5." insert "**(a)**".

Page 7, line 38, delete "and each".

Page 7, line 39, delete "year thereafter,".

Page 7, after line 42, begin a new paragraph and insert:

"**(b) On July 1, 2011, and each year thereafter, the council shall transfer to the budget agency for deposit in the retail merchant E85 deduction reimbursement fund established by section 30.5 of this chapter an amount equal to the difference between:**

**(1) five hundred thousand dollars ($500,000); minus**

**(2) the balance remaining in the fund on June 30.**

**However, the amount transferred under this subsection may not exceed five hundred thousand dollars ($500,000).**

SECTION 13. IC 15-15-12-33, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 33. (a) If a producer has sold corn and the state assessment was deducted from the sale price of the corn, the producer may secure a refund equal to the amount deducted upon filing a written application.

(b) A producer's application for a refund under this section must be made to the council not more than one hundred eighty (180) days after

the state assessment is deducted from the sale price of the producer's corn.

(c) The council shall provide application forms to a first purchaser for purposes of this section upon request and make application forms available on the council's Internet web site. Before July 1, 2009, a first purchaser shall provide an application form to each producer along with each settlement form that shows a deduction. After June 30, 2009, a first purchaser shall make application forms available in plain view at the first purchaser's place of business.

(d) Proof that an assessment has been deducted from the sale price of a producer's corn must be attached to each application for a refund submitted under this section by a producer. The proof that an assessment was deducted may be in the form of a duplicate or an original copy of the purchase invoice or settlement sheet from the first purchaser. The ~~claim~~ **refund** form and proof of assessment may be mailed or faxed to the council. The refund form must clearly state how to request a refund, the address where the form may be mailed, and the fax number where the form may be faxed.

(e) If a refund is due under this section, the council shall remit the refund to the producer not later than thirty (30) days after the date the producer's **completed** application and proof of assessment are received.

SECTION 14. IC 15-15-12-34, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 34. The checkoff ~~assessment and remittance record~~ **refund** form must:

~~(1) be in a format that allows a corn producer to submit the same form for an assessment refund;~~

~~(2)~~ **(1)** contain the address and fax number of the location to which the assessment refund form may be sent;

~~(3)~~ **(2)** contain information concerning procedures to claim an assessment refund; and

~~(4)~~ **(3)** contain any other information determined necessary by the council.

SECTION 15. IC 15-15-12-35, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 35. (a) A first purchaser shall keep detailed records of all assessments collected and remitted under this chapter for at least three (3) years.

(b) Upon request, a first purchaser shall supply the council with any information from records kept under subsection (a).

(c) The council may periodically audit a first purchaser's checkoff assessment and remittance records kept under subsection (a). An audit

must be conducted by:

**(1)** a qualified public accountant of the council's choosing; **or**

**(2) an auditor who is familiar with the:**

**(A) storage;**

**(B) conditioning;**

**(C) shipping; and**

**(D) handling;**

**of agricultural commodities.**

~~and~~ The costs of the audit shall be paid by the council.

SECTION 16. IC 16-44-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) The inspections and tests made by the state department under this chapter shall be conducted in accordance with the methods outlined by the American Society for Testing and Materials.

(b) The inspections and tests as to gasoline, ~~gasohol,~~ **ethanol blended fuel,** and kerosene must reflect the following minimum specifications necessary for the approval of the product:

(1) Gasoline or ~~gasohol.~~ **ethanol blended fuel:**

(A) Corrosion Test – Method ASTM D-130. A clean copper strip may not show more than extremely slight discoloration when submerged in the gasoline for three (3) hours at one hundred twenty-two (122) degrees Fahrenheit.

(B) Distillation Range – Method ASTM D-86. When the thermometer reads one hundred sixty-seven (167) degrees Fahrenheit, not less than ten percent (10%) may be evaporated. When the thermometer reads two hundred eighty-four (284) degrees Fahrenheit, not less than fifty percent (50%) may be evaporated. When the thermometer reads three hundred ninety-two (392) degrees Fahrenheit, not less than ninety percent (90%) may be evaporated. The residue may not exceed two percent (2%). Percent evaporated is found by adding the distillation loss to the amount collected in the receiver at each specification temperature.

(C) Sulphur – Method ASTM D-1266 or D-2622. Sulphur may not exceed twenty-five hundredths of one percent (0.25%).

(D) Vapor Pressure – Method ASTM D-4953, ASTM D-5191, or any other ASTM method to determine vapor pressure approved by the United States Environmental Protection Agency. For gasoline, the Reid vapor pressure at one hundred (100) degrees Fahrenheit may not exceed the following:

(i) Fifteen (15) pounds per square inch at the normal barometric pressure at the point of delivery during

November, December, January, February, and March.

(ii) Fourteen (14) pounds per square inch during April and October.

(iii) Twelve (12) pounds per square inch during May, June, July, August, and September.

(E) For ~~gasohol (a blend of gasoline and alcohol permitted under federal tax requirements),~~ **ethanol blended fuel,** the vapor pressure may not exceed the following:

(i) Sixteen (16) pounds per square inch during November, December, January, February, and March.

(ii) Fifteen (15) pounds per square inch during April and October.

(iii) Thirteen (13) pounds per square inch during May, June, July, August, and September.

(F) After July 23, 2004, gasoline may not contain more than one-half percent (0.5%) of MTBE by volume.

(2) Kerosene:

(A) Flash Test – Method ASTM D-56. Flash point may not be lower than one hundred (100) degrees Fahrenheit.

(B) For the purpose of this chapter, any petroleum product designated by name or reference as "kerosene" must meet the federal specifications for kerosene VV-K-211d in effect on March 1, 1977.

(c) Gasoline, gasohol, and kerosene products that do not comply with the minimum specifications described in subsection (b) may not be sold, offered for sale, or used in Indiana.

(d) Petroleum products other than gasoline, gasohol, or kerosene shall be inspected and tested by the methods as are necessary to determine the contents and characteristics of the product.

**(e) As used in this section, "ethanol blended fuel" has the meaning set forth in IC 6-2.5-7-1(t).**".

Page 8, delete lines 9 through 11, begin a new paragraph and insert:

"**(d) "Ethanol blended fuel" refers to any blend of gasoline and ethanol nominally consisting of less than eighty-five percent (85%) gasoline and satisfying either of the following:**

**(1) The blend consists of more than ten percent (10%) ethanol.**

**(2) The blend consists of a percentage of ethanol authorized by at least one (1) of the following:**

**(A) The Indiana Code.**

**(B) The United States Code.**

**(C) A waiver granted under Section 211(f) of the federal**

**Clean Air Act Amendments of 1977.**".

Page 8, line 41, after "2009]" insert ".".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1398 as reprinted February 24, 2009.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1398 be amended to read as follows:

Page 1, between lines 15 and 16, begin a new paragraph and insert:

"**(e) As used in this section, "E85" has the meaning set forth in IC 6-6-1.1-103.**".

Page 1, line 16, strike "(e)" and insert "**(f)**".

Page 1, after line 17, begin a new paragraph and insert:

"**(g) As used in this section "mid-level blend fuel" means a fuel blend consisting of:**

**(1) at least twenty percent (20%) but not more than seventy-three percent (73%) ethanol; and**

**(2) gasoline as the balance.**".

Page 2, line 1, strike "(f)" and insert "**(h)**".

Page 2, line 5, strike "(g)" and insert "**(i)**".

Page 2, line 5, strike "subsection (i)," and insert "**subsections (k) and (l),**".

Page 2, line 6, delete "ethanol blended fuel (as defined" and insert "**mid-level blend fuel or E85**".

Page 2, line 7, delete "in IC 6-2.5-7-1(t))".

Page 2, line 9, strike "(h)" and insert "**(j)**".

Page 2, line 9, strike "subsection (i)," and insert "**subsections (k) and (l),**".

Page 2, line 12, strike "(i)" and insert "**(k)**".

Page 2, line 13, strike "(g)" and insert "**(i)**".

Page 2, line 13, strike "(h):" and insert "**(j):**".

Page 2, strike lines 16 through 17.

Page 2, line 18, delete "ethanol blended fuel (as defined in IC 6-2.5-7-1(t))".

Page 2, line 18, strike "or".

Page 2, strike line 19.

Page 2, line 20, strike "(3)" and insert "**(2)**".

Page 2, delete lines 24 through 42, begin a new paragraph and insert:

"**(l) The following vehicles are exempt from the requirements of subsection (i) or (j), whichever is appropriate:**

**(1) A gasoline fueled vehicle in which the use of mid-level blend fuel or E85 has not been approved by the manufacturer.**

**(2) A diesel fueled vehicle in which the use of blended biodiesel fuel has not been approved by the manufacturer.**

**(3) A gasoline fueled vehicle in which the use of mid-level blend fuel is prohibited by the federal Clean Air Act (42 U.S.C. 7401 et seq.).**".

Delete page 3.

Page 4, delete lines 1 through 13.

Page 6, delete lines 31 through 42.

Delete pages 7 through 12.

Page 16, delete lines 7 through 42.

Page 17, delete lines 1 through 28.

Page 17, delete lines 37 through 42, begin a new paragraph and insert:

"**(d) As used in this section, "E85" has the meaning set forth in IC 6-6-1.1-103.**".

Page 18, delete lines 1 through 5.

Page 18, between lines 7 and 8, begin a new paragraph and insert:

"**(f) As used in this section, "mid-level blend fuel" means a fuel blend consisting of:**

**(1) at least twenty percent (20%) but not more than seventy-three percent (73%) ethanol; and**

**(2) gasoline as the balance.**".

Page 18, line 8, delete "(f)" and insert "**(g)**".

Page 18, line 12, delete "(g)" and insert "**(h)**".

Page 18, line 12, delete "subsection (i)," and insert "**subsections (j) and (k),**".

Page 18, line 13, delete "ethanol blended fuel" and insert "**mid-level blend fuel or E85**".

Page 18, line 16, delete "(h)" and insert "**(i)**".

Page 18, line 16, delete "subsection (i)," and insert "**subsections (j) and (k),**".

Page 18, line 20, delete "(i)" and insert "**(j)**".

Page 18, line 21, delete "(g)" and insert "**(h)**".

Page 18, line 21, delete "(h):" and insert "**(i):**".

Page 18, delete lines 24 through 27.

Page 18, line 28, delete "(3)" and insert "**(2)**".

Page 18, between lines 31 and 32, begin a new paragraph and insert:

"**(k) The following vehicles are exempt from the requirements of subsection (h) or (i), whichever is appropriate:**

**(1) A gasoline fueled vehicle in which the use of mid-level blend fuel or E85 has not been approved by the manufacturer.**

**(2) A diesel fueled vehicle in which the use of blended biodiesel fuel has not been approved by the manufacturer.**

**(3) A gasoline fueled vehicle in which the use of mid-level blend fuel is prohibited by the federal Clean Air Act (42 U.S.C. 7401 et seq.).**".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1398 as printed March 18, 2009.)

GARD